No. 85-1699

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

LaSALLE NATIONAL BANK OF CHICAGO, as Trustee under Trusts Numbered 40244, 53645, 100385 and 100386, UNITY VENTURES, and WILLIAM ALTER,

Petitioners,

v.

THE COUNTY OF DuPAGE, a body politic, THE BOARD OF COMMISSIONERS OF DuPAGE COUNTY, a body politic, THE VILLAGE OF LISLE, a municipal corporation, and THE VILLAGE OF WOODRIDGE, a municipal corporation,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITIONERS' REPLY

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Respondents contend that this case is simply *Town of Hallie*[1] revisited and that the Petition should be denied since nothing new is presented here. This representation is patently false and would surprise the two lower courts that certainly did not address this case as merely a reprise of *Hallie.*

(1) The District Court rejected the very arguments that respondents now make here, and its decision denying state action immunity is still correct:

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[1] *Town of Hallie v. City of Eau Claire,* 105 S.Ct. 1713 (1985).

> While these provisions authorize municipalities to cooperate in exercising their constitutional and statutory powers, they do not clearly and affirmatively authorize them to jointly engage in the anticompetitive conduct which Plaintiffs complain about here. In this regard, they are like the home rule provision in *Boulder* which gave the municipality the capacity to pass the cable television ordinance but did not authorize it to pursue the anticompetitive conduct that Plaintiffs complained about in their antitrust suit. By comparison, the Wisconsin statutes and case law involved in *Hallie* specifically authorize the anticompetitive actions which Defendants allegedly took. [Petition App. A-8; footnote omitted.]

(2) Even the Court of Appeals plainly did not view the matter as a repeat of *Hallie* since it found the state action issue to be "a close question." *LaSalle Nat. Bank v. DuPage County*, 777 F.2d 377, 379 (7th Cir. 1985). Indeed, the Court of Appeals' construction of a state action immunity based on a complex patchwork of disparate state constitutional provisions, statutes, and alleged "policies" belies the notion that this case is anything like *Hallie*.

It bears emphasis that in *Hallie* the specific local governmental action alleged to violate the antitrust laws was explicitly authorized by the state statute in question—there was *no* dispute about that. The *only* question raised for decision in this Court was whether there was a need for an express declaration by the legislature, either in the statute or in the legislative history, that the lawmakers intended for the local governmental unit to take action with foreseeably anticompetitive consequences. This Court held only that once the conduct in question has been specifically authorized by the state and anticompetitive consequences were reasonably foreseeable, there is no need for an express legislative statement about foreseeable anticompetitive consequences.

(3) Neither *Town of Hallie*, nor any other decision by any court except the Seventh Circuit in this case, has held that specific conduct that is admittedly *unauthorized* may still be immunized by the fact that the state has generally authorized its local governmental units to take action in the area in question. In this case, DuPage County's zoning decision was definitively ruled unconstitutional and improper by the Illinois courts, and yet the Seventh Circuit found the general zoning statute in Illinois to immunize *every* zoning action undertaken cooperatively by local governmental units. This holding, which obviously infects the entire decision below, turns the state action principle on its head and specifically repudiates *City of Boulder*.[2]

(4) Unlike this case, *Town of Hallie* did not deal at all with concerted action by units of local government. *Town of Hallie* dealt solely with one city's unilateral conduct. This distinction was the basis for the District Court's decision in this case, and the Seventh Circuit never really addressed it. The question is one of first impression for this Court.

(5) Ultimately respondents simply quote at length from the decision below and declare, by *ipse dixit*, that the Seventh Circuit opinion demonstrates that the challenged actions in question were specifically authorized. But even a cursory review of the statutes involved demonstrates that the Court of Appeals struggled to patch together a variety of constitutional provisions, state statutes, and supposed state policies to create a state action defense which the Illinois legislature itself had not contemplated.

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[2] *Community Communications Co. v. City of Boulder*, 455 U.S. 40 (1982).

Therefore, the questions raised by the Petition remain unanswered by respondents. They refuse to address the question whether *City of Boulder* requires a rejection of a state action defense where the units of local government rely on general "cooperation" statutes to shield their admittedly anticompetitive concerted action, which was itself found to be illegal under state law.

For these reasons, petitioners ask the Court to issue the writ of certiorari and address the important issues of antitrust law which this case presents but which the Court of Appeals failed to address forthrightly or correctly.

DATED: May 19, 1986

Respectfully submitted,

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